

THE CIRCUIT COURT OF BAXTER COUNTY, ARKANSAS
CRIMINAL DIVISION

STATE OF ARKANSAS

PLAINTIFF

VS.

CASE NO. 03CR-23-363

JAYSON LEE COTTER

DEFENDANT

MOTION FOR DISCOVERY

COMES NOW the Defendant, by and through the Office of the Public Defender, pursuant to the Arkansas Rules of Criminal Procedure, the Due Process and fair trial provisions of the Sixth and Fourteenth Amendments to the United States Constitution and Art. 2, §§ & 10 of the Constitution of the State of Arkansas and for this Motion states that he has been charged by Information and requests that the prosecuting attorney furnish him with the following material and information which is or may come within the possession, control, or knowledge of the Prosecuting Attorney, whether said information is in the possession of the Prosecuting Attorney, police or other law enforcement agencies or entities, the Arkansas State Crime Lab, a Drug Task Force, ACIC or NCIC:

1. The names, addresses, and contact information of persons whom the state intends to call as witnesses at any hearing or trial sufficiently in advance of that hearing or trial to permit preparation. *A.R.Crim.P. 17.1(a)(i)*.
2. Any written or recorded statements or the substance of any oral statements made by defendant or a codefendant or a potential codefendant or any one given legal or *de facto* immunity to provide information or testimony. *A.R.Crim.P. 17.1(a)(ii)*. This includes statements intended to be used as admissions. *A.R.E. 801(d)*.
3. Any portions of grand jury minutes containing testimony of the Defendant, as well as the substance of any relevant grand jury testimony or, if any information was filed, all evidence that was the basis of the charge, the prosecutor having sat as a grand jury;
4. Any reports or statements of experts in this case, including the results of any physical or mental examinations, scientific tests, experiments, or comparisons. *A.R.Crim.P. 17.1(a)(iv)*. Early disclosure of expert reports is required for the court to evaluate the expert's opinion under *Daubert* because the Court is the gatekeeper of expert opinions.
5. Any books, papers, documents, computer records, photographs, videotapes,

audiotapes, digital recordings, or tangible objects, including any recreations, whether computer generated animations or whatever, which the state intends to use at any hearing or trial in this case *or* which were obtained from or belong to the defendant. *A.R.Crim.P. 17.1(a)(v)*.

6. Any and all reports by the Arkansas State Crime Lab (ARSCL) connected with the above styled case. This should include the entire ARSCL's "case file," which includes but is not limited to all logs and notes kept in association with any piece of evidence or potential evidence. (*ie*: analyzer's bench notes and technical reviewer's notes and/or opinions.)

7. Further, the state should provide similar disclosure of anything similar that it does not intend to use at any hearing or trial in this case because its non-use indicates a great potential that it is *Brady* material. *Brady v. Maryland*, 373 U.S. 83 (1963).

(a) Defendant specifically requests production of the notes of the officers from which reports in the file were produced. Those notes commonly include information about leads that did not pan out and people interviewed that may have known something else about the events giving rise to this case.

(b) The State must make a specific request for production of these notes from the officers because it will not be in an open file, and a discovery response that merely directs defense counsel to come and copy their file does not comply with this request.

8. Any record of any person who may be called as a witness at any stage of this proceeding whether presently known or capable of being ascertained, including but not limited to:

(a) prior convictions, by an ACIC or NCIC check, or otherwise. *A.R.Crim.P. 17.1(a)(vi)*;

(b) juvenile adjudications that would be admissible for impeachment if committed by an adult. *A.R.E. 609(d)*; and

(c) Any psychiatric or drug rehabilitation history of informants.

9. Whether there has been any electronic (including audio, video, or digital) surveillance or recording of conversations or actions of the defendant (including surreptitious recordings of him while in a police interview room or elsewhere) statements or his or her premises, location tracking by global positioning systems ("GPS"), copying of e-mail or other electronic transmissions, audio recordings (whether consented to by one party to the

conversation or not) along with a description of the recordings and copies of any transcripts, whether these are directly based on this charge or surveillance preceding defendant's arrest. *A.R.Crim.P. 17.1(b)(ii)*. This includes any and all video, audio or other recordings of any traffic stop, body-cam and "body-mic", and actions or words of the defendant anytime in custody or in contact with law enforcement.

10. If the Defendant's contact with law enforcement was caused by a roadblock or checkpoint, by whatever name called please provide:

a. A copy of the plan under which said roadblock or checkpoint was to be executed;

b. The names and contact information for each and every person involved in the design or planning, approval, or execution of said plan. *Whalen v. State*, 2016 Ark. 343, 500 S.W.3d 710.

11. The relationship between the state and any witness the state will call as a witness; *e.g.*, employee of any governmental entity, informant status, witness in this or another case, a defendant or former defendant in a criminal case in municipal, circuit, or federal court.

12. The relationship between the Prosecuting Attorney or any employee of his or her office to any witness to this case.

13. Any inducements, promises of leniency, consideration (financial or otherwise) or anything else that is potential impeachment evidence against a confidential informant or any other witness. *A.R.Crim.P. 17.1(b)(iii), (d)*; *Brady v. Maryland*, *supra*; *Kyles v. Whitley*, 514 U.S. 419 (1995); *Strickler v. Greene*, 527 U.S. 263 (1999); *Banks v. Dretke*, 540 U.S. 668 (2004); Arkansas Rules of Professional Conduct, Rule 3.8(d), including any written or oral agreements or any documentary evidence concerning an informant or cooperating individual that:

(a) provides for leniency, protection from arrest, prosecution, or asset forfeiture, sentencing recommendations, or anything of the kind from any past, present, or future criminal acts;

(b) provides for payment of anything of value for his or her services including proof of payment, IRS 1099s for their payments, and the informant's tax returns; and

(c) proof or summaries of the payments to the informant.

14. As to any searches and seizures:

(a) Disclose and permit inspection, copying, or photocopying of documents of any material or computer or computer-like memory, disks, or hard drives concerning any searches and seizures of the defendant or his or her property or statements that he or she allegedly made. A.R.Crim.P. 17.1(c). Copying of computer disks and hard drives requires copying invisible files that are not visible on the directory but which are still present on disks.

(b) If a search warrant was relied upon, provide a copy of: (i) the warrant, (ii) all materials used to obtain the warrant, and (iii) the inventory.

(c) If inventory search may be relied on as a justification for the search, please provide the police department's policy on conducting inventory searches because it is the state's burden to justify the search.

(d) Any video or audio of the occurrence (*see* & 9, *supra*).

(e) Any GPS surveillance of the defendant or his movements which defendant asserts is a search and seizure. *People v. Weaver*, 12 N.Y.3d 433, 882 N.Y.S.2d 357, 909 N.E.2d 1195 (2009); *United States v. Maynard*, 2010 WL 3063788, 2010 U.S. App. LEXIS 16417 (D.C. Cir. August 6, 2010).

15. As to impeachment (*Brady*) evidence:

(a) Any other evidence or thing in the knowledge of, possession, or control of the state (A.R.Crim.P. 17.3) or its agents which tends to negate the guilt of the defendant as to the offense charged (including anything which tends to impeach a state's witness) or would tend to reduce the punishment for the offense. A.R.Crim.P. 17.1(d); *Brady v. Maryland*, *supra*; *Kyles v. Whitley*, *supra*; *Strickler v. Greene*, *supra*; Arkansas Rules of Professional Conduct, Rule 3.8(d) (in addition, Rule 3.8(d) imposes greater duties on the prosecutor than does *Brady*. ABA Formal Opinion 09-454 (July 9, 2009)).

(b) Impeachment evidence includes statements of witnesses where they are even *slightly* inconsistent in their versions of events from one statement to the next (oral statement to written; two written statements; etc.). *Strickler v. Greene*, *supra*; *Kyles v. Whitley*, 514 U.S. at 452 (even if statements of not all witnesses are impeachable); *United States v. Sudikoff*, 35 F.Supp.2d 1196 (C.D. Cal. 1999).

- (c) This includes any evidence that anyone else was at one time considered a suspect. *Fairchild v. Lockhart*, PB-C-83-272 (E.D.Ark.).
 - (d) The prosecuting attorney has a duty to inquire of the police to be certain that all potentially discoverable *Brady* material has been discovered, provided to the prosecutor by the police, and disclosed. *Kyles*, 514 U.S. at 437-38 (*Brady* includes material known by the police and not prosecutor; The individual prosecutor has a duty to learn of any favorable evidence known to others acting on the government's behalf in this case, including the police).
 - (e) Negative evidence; *e.g.*, as the result of any type of scientific test that failed to connect the defendant to the crime such as absence of fingerprints, physical, or serological evidence or presence of such evidence of another. *Patler v. Slayton*, 503 F.2d 472 (4th Cir. 1974).
 - (f) The fact that a witness has testified falsely even in an unrelated case. *United States v. Mastri*, 547 F.2d 932 (5th Cir. 1977).
16. Any 404(b) evidence; A.R.E. 404(b); which the state intends to or may use against the defendant. An open file policy does not provide specific notice. *State v. Stewart*, 2006 ND 39, 710 N.W.2d 403 (2006).
 17. Any evidence which could be used in the punishment phase against the defendant under Ark. Code Ann. § 16-97-103.
 18. The hospital-medical reports of the victim, including any and all toxicology reports and rape kit results.
 19. All information obtained from any criminal justice database, including but not limited to the NCIC and ACIC databases, regarding the criminal justice history of any juror or prospective juror, or the family member of any juror or prospective juror. In the event that the identities of the prospective jurors are not known until shortly before the trial, the Court should order provision of the information within 24 hours of its accession by the Prosecuting Attorney or persons (such as law enforcement officers) providing this information to the Prosecuting Attorney or before the beginning of jury selection, whichever is earlier.
 20. That the prosecutor use diligent, good faith efforts to obtain material in the possession of other governmental personnel which would be discoverable if in the possession or control of the Prosecuting Attorney, whether herein designated or not.

21. While it goes without saying that parties have a continuing duty to disclose material that comes into the party's hands after a previous disclosure (A.R.Crim.P. 19.2), defendant reasserts this right.

WHEREFORE, Defendant further requests that the Prosecuting Attorney or his Deputy file a formal and timely response to this motion in order that a record of discovery, or the lack thereof, may be preserved in this case for purposes of appeal, and to insure the orderly progress of this matter and the administration of justice. The State should consider this to be a continuing motion, with all information received by the State to the date of trial to be furnished to the Defendant in compliance with Arkansas Rules of Criminal Procedure 19.2.

JAYSON LEE COTTER

By: /s/ James Wallace
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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

I, James Wallace, attorney for the Defendant herein, hereby certify that I have served a copy of the foregoing Motion for Discovery by causing a true and correct copy thereof to be delivered, via the e-flex filing system to Deputy Prosecuting Attorney, Kerry Chism, in Mountain Home, Baxter County, Arkansas this 8th day of September 2023.

/s/ James Wallace
James Wallace, Arkansas Bar No. 2014265